

March 26, 2001

D.T.E. 01-35

Investigation by the Department on its own motion as to the propriety of the rates and charges of Astro Water Supply, as set forth in M.D.T.E. No. 3, filed with the Department on March 20, 2001 to become effective April 15, 2001.

---

APPEARANCES: Elmer Wing, President

Astro Water Supply

P.O. Box 862

Lakeville, Massachusetts 02347

FOR: ASTRO WATER SUPPLY

Petitioner

INTERIM ORDER ON PETITION FOR EMERGENCY RATE RELIEF

## I. INTRODUCTION

On March 20, 2001, Astro Water Supply ("Astro" or "Company"), pursuant to

G.L. c. 164, § 94 and G.L. c. 165, § 2, filed new rates and charges with the Department of Telecommunications and Energy ("Department"), seeking an emergency rate increase of \$20,090, representing an increase of approximately 113.1 percent. The Company operates seasonally between April 15<sup>th</sup> and October 15<sup>th</sup> and supplies 120 customers in the Clarks Shore section of the Town of Lakeville. Astro last received a rate increase in 1988, when a seasonal charge of \$148 per household was established. Astro Water Supply, D.P.U. 88-27 (1988).

## II. REQUEST FOR EMERGENCY RATE RELIEF

In its filing, Astro stated that as a result of increasing costs and a declining customer base, the Company will cease operations on October 15, 2001 (Petition at 1). Until that time, Astro will remain subject to the jurisdiction of the Department for rate regulation, and the Massachusetts Department of Environmental Protection ("DEP") which is responsible for enforcement of the federal Safe Drinking Water Act. G.L. c. 164, §94; G.L. c. 165, §2;

G.L. c. 21, §17; G.L. c. 92, §17; G.L. c. 111, §160.

Since June 2000, Astro has been operating under a DEP-mandated boil order, which requires customers to boil all water before use (Petition at 3).<sup>(1)</sup> By letter dated March 9, 2001, DEP directed the Company to install a chlorination system to prevent bacterial contamination of its water supply and to employ personnel certified to operate the treatment equipment (*id.*). DEP has informed Astro that if treatment equipment is not installed, Astro will not be permitted to open for the 2001 season (*id.*).<sup>(2)</sup> Therefore, Astro has requested an emergency rate increase for the sole purpose of covering its operating costs, including those associated with the purchase of the required equipment, for the 2001 season (Petition at 1).

## III. STANDARD OF REVIEW

The granting of an interim increase necessarily means that the Department must act without a full hearing and without subjecting the proposed rate filing to close scrutiny that takes place during the full period of suspension. Therefore, the Department limits interim relief to situations in which a genuine financial emergency exists and when interim relief is necessary to avoid probable, immediate and irreparable harm either to a company or to the interests of its customers. CSB Water Company, D.P.U. 91-101, at 1-2 (1992); Wylde Wood Water Works, D.P.U. 86-93, at 6-9 (1987); Fitchburg Gas and Electric Light Company, D.P.U. 1270/1414, at 9 (1983).

## IV. ANALYSIS AND FINDINGS

The Company has been informed by DEP that unless specific remedial measures are taken to ensure that Astro's system is in compliance with state regulations, the Company will not be permitted to supply water for the 2001 season (Petition at 3). Consequently, the Department finds that a failure to take such corrective measures would cause probable, immediate, and irreparable harm to Astro and their customers.

In making a determination for emergency rate relief, the Department reviewed the Company's Profit and Loss Statement which indicates that Astro operated at a revenue loss of approximately \$12,285 for the year 2000 (Astro Profit and Loss Statement).<sup>(3)</sup> Based on our review of this statement, it is apparent that Astro's existing rates do not provide sufficient revenues to cover the costs associated with the purchase of a chlorination system or the employment of personnel certified to operate such treatment systems. Without the revenues, the Company will be precluded by the DEP from operating this season.

The Company represents that total seasonal revenues of \$37,850, or an additional \$20,090 over test-year annualized revenues, would be necessary to permit Astro to open for the season and to provide safe, reliable service to its customers, in accordance with DEP directives (Petition at 4). As part of Astro's proposed cost of service, the Company included \$2,000 for the chlorination system, \$2,500 in engineering fees, and \$1,000 in pipe replacement costs (*id.*). These expenses represent capital costs that would be recovered over the life of the assets through depreciation expense and a return on the undepreciated portion of the investment. Assabet Water Company, D.P.U. 95-92, at 6-8 (1996); Glacial Lake Charles Aquifer Water Company, D.P.U. 88-197, at 7-8 (1989). In this case, the Company is seeking full funding in advance of construction through a one-time increase in rates, representing a cost per customer associated with these items of approximately \$45.83 (Petition at 4).

Astro's proposed method of recovery is analogous to an assessment on customers, differing only in details of tariff construction. See Duck Farm Springs Water Company, D.P.U. 89-259, at 5 (1990). To grant the extraordinary form of relief requested by Astro, the Department must find that the Company has demonstrated: (1) that a genuine financial emergency exists; (2) that the proposed assessment is the only practical way to avoid probable, immediate, and irreparable harm to the Company and to the interests of its customers; and (3) that the amount and terms of the assessment are just and reasonable. *Id.*, at 5.

Astro has affirmatively demonstrated that the chlorination system is the only feasible means of treating its water supply and maintaining service to its customers. Moreover, given the Company's financial situation and intention to shut down at the end of the 2001 season, the Department is persuaded that Astro would be unable to finance the cost of the project through either internally-generated funds or external borrowings. Accordingly, the Department shall include the chlorination system and pipe upgrades in the Company's cost of service as a component of the total seasonal charge.<sup>(4)</sup>

As to the other expenses for which Astro is seeking to include as part of its emergency rate relief, the Department has established policies concerning ratemaking treatments of specific expenses. See, e.g., Fitchburg Gas and Electric Light Company, D.P.U. 1270/1414, at 32-33. A significant portion of the proposed operating expenses is represented by a labor expense of \$12,000, which the Company derived based on an hourly charge of \$15 applied to an estimate of 800 hours per year (Petition at 4). Based on the Department's knowledge and expertise in water utility operations, and in consideration of the fact that the Company is not seeking a return on its investment, the Department considers the proposed labor expense to be reasonable for the purposes of evaluating the Company's request for emergency rate relief. Assabet Water Company, D.P.U. 95-92, at 20; Astro Water Supply, D.P.U. 88-27, at 25-26.

Concerning the other proposed expenses, the claimed expenses appear unexceptional on the surface. Therefore, the Department will permit the inclusion of the proposed expenses in emergency rates. Accordingly, the Department finds that the Company is in a genuine financial emergency, and that emergency rate relief is necessary to avoid probable, immediate and irreparable harm to Astro and the interests of its customers. Therefore, the Department grants Astro's request for emergency rate relief.

G.L. c. 164, § 94, as applicable to water companies pursuant to G.L. c. 165, § 2, requires the Department to notice and hold a public hearing on the propriety of a request for a general rate increase. In order to comply with the notice and hearing requirements, the Department hereby grants the Company's petition for emergency rate relief on an interim basis, pending the results of our investigation.

While the Department has no reason to doubt Astro's intention to comply with DEP directives, we are obligated to exercise our statutory authority independent from that of DEP to ensure the continuation of safe, reliable service to the Company's customers. G.L. c. 165, § 4. Therefore, the Department's interim approval is subject to the understanding that Astro will comply with all DEP directives concerning the chlorination system and certified operator. If the Company fails to meet these conditions, the Department shall take appropriate measures, which may include the rescission of the proposed tariff in favor of the present rate of \$148 per year. West Stockbridge Water Company, D.P.U. 16304, at 5 (1971). Such a rescission would render the Company subject to the requirement that it refund to customers the difference between the rate of \$315 being approved by this Order and the current rate of \$148, on a pro rata basis.<sup>(5)</sup>

#### V. ORDER

Accordingly, after due consideration, it is

ORDERED: That the rates and charges set forth in M.D.T.E. No. 3, filed with the Department on March 20, 2001 to become effective April 15, 2001 by Astro Water Supply are hereby ALLOWED; and it is

FURTHER ORDERED: That the new rates shall apply to water consumed on or after the date of this Order; and it is

FURTHER ORDERED: That Astro Water Supply shall comply with all other orders and directives contained herein; and it is

FURTHER ORDERED: That Astro Water Supply publish the Notice of Investigation in accordance with the directives of the Secretary of the Commission.

By Order of the Department,

---

James Connelly, Chairman

---

W. Robert Keating, Commissioner

---

Paul B. Vasington, Commissioner

---

Eugene J. Sullivan, Jr. Commissioner

---

Deirdre K. Manning, Commissioner

1. The "boil" order was imposed as a result of presence of *e.coli* bacteria found in the Company's water supply (Petition at 3).
2. Because of public health considerations, DEP does not consider boiling water to constitute an acceptable long-term solution to water contamination problems.
3. On January 4, 2001, DEP provided the Department with Astro's income and expenses for the period March 1, 2000 through January 2, 2001. The Department hereby takes administrative notice of the income and expense statement. 220 C.M.R. § 1.10 (2).
4. If the Company does transfer ownership of its assets to another entity subject to the Department's jurisdiction after the end of the 2001 season, the new owner shall be required to file new tariffs reducing the annual charge by \$45.83, unless the new owner files a general rate increase pursuant to G.L. c. 164, § 94 and G.L. c. 165, § 2. Astro is hereby directed to provide the new owner, if any, with a copy of this Order.
5. G.L. c. 164, § 94, as applicable to water companies pursuant to G.L. c. 164, § 2 provides in pertinent part: "Such rates, prices and charges shall apply to the consumption shown by meter readings made after (emphasis added) the effective date of such rates, prices and charges, unless the [D]epartment otherwise orders." Because Astro bills its customers in advance prior to the start of the operating season, the Department does not consider a refund based on a daily proration to be inconsistent with the prohibitions against retroactive ratemaking. Cf. Newton v. D.P.U., 352 Mass. 667, 679 (1975); M.D.C. v. D.P.U., 352 Mass. 18, 23 (1967).